

Remarks

Favorable reconsideration of this application in view of the amendments to the claims and the remarks below is respectfully requested.

Applicants note that claims 4, 5, 9, 10, 13 and 14 have been withdrawn from consideration. It is respectfully requested that these claims be examined since they contain additional limitations to the elected species. Since the elected invention is viewed to be patentable in view of the remarks below, the withdrawn claims should also be patentable without additional examination.

Applicants note that the Examiner has indicated that the elected non-aqueous composition comprising metconazole as set forth in Applicant's election filed 1/10/01 is not allowable. Applicant was citing the actual components of the composition as set forth in Examples C-H. Newly presented Claim 17 is drawn to the elected composition where trademarks are not used. In addition the term "n-odylpyrrolidone" has been amended to "n-octylpyrrolidone", correcting an obvious typographical error, as can be seen from Example C where the correct term is used.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, for the use of the term "said adjuvant" and for setting forth two range limitations in the claim. This rejection is moot in view of the amendments to the claims as follows:

1. The term "adjuvant" has been replaced by the term "alkoxylates of aliphatic alcohols", the term used in claim 1. Basis for this amendment is found in the specification on page 9, line 13.

2. Claim 8 has been divided into claims 8 and 17 with a single range in each claim.

Claims 1-3, 6-8, 11, 12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Valcke et al. The basis of the rejection is that Valcke et al discloses an emulsifiable concentrate comprising many of the components of the instant claimed composition and that one of ordinary skill in the art would have been expected to determine the optimum carbon number for the alkoxyated alcohol component as well as the optimum amounts and ratios of ingredients for the instant composition. This rejection is respectfully traversed.

The composition of the instant invention is a non-aqueous emulsifiable concentrate (EC) formulation. Included in the formulation is an alkoxyate of an aliphatic alcohol, an adjuvant (p. 9, line 13). The various components of the formulation are present in defined ratios.

The Examiner is correct in stating that Valcke does not teach the composition comprising an alkoxyated alcohol with the instant number of carbons and the instant amounts and ratios of components. Further one of ordinary skill in the art would not be motivated to arrive at the instant optimum number of carbons and/or amounts and ratios.

In Valcke the alkoxyated alcohol is disclosed to be a solvent (col. 6, lines 33-44) or as non-ionic surfactants (col. 7, lines 15-36). The examples of alkoxyated alcohols cited by the Examiner, polyethylene oxide with propylene glycol or nonylphenol polyethoxy ethanol, are disclosed by Valcke to be non-ionic surfactants of particular utility in compositions for material, in particular wood, protection. There is no motivation from these teachings to use the alkoxyated alcohol of the instant invention as adjuvants, especially since they are different alkoxyated alcohols as defined in the specification.

There also is no teaching or suggestion in Valcke to arrive at the instant claimed amounts and ratios. The reason for this is that at least one component (alkoxyated alcohol)

is present for a different function. One does not generally use the same amount of a compound as an adjuvant as one does if the compound is a solvent.

Accordingly, there is no motivation in Valcke for one of ordinary skill in the art to arrive at the instant claimed invention. Reconsideration is respectfully requested.

Copy of claims showing changes made.

8. (Amended) A formulation according to Claim I wherein the ratio of the crop protection active compounds (a) to said ~~adjuvant~~ alkoxyates of an aliphatic alcohol (b) is between 1:0.5 and 1:100, ~~preferably between 1:1 and 1:10.~~

If the Examiner believes a telephone call to the undersigned would favorably advance the prosecution of this application or narrow any outstanding issues, he is respectfully invited to call the undersigned at the telephone number indicated below.

Respectfully submitted



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CERTIFICATION UNDER 37 CFR 1.8

I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on the date written below with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

May 2, 2001
Date

Ann Giovanelli
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